JUNE 1953

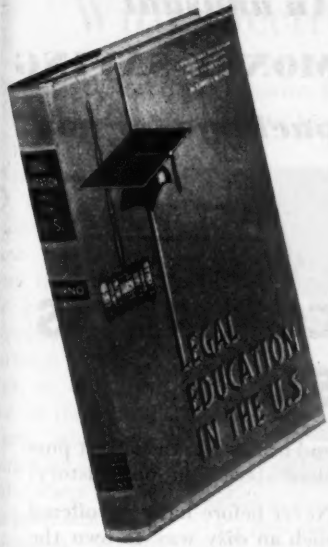
Case and Comment

The Lawyers' Magazine—Established 1894

IN THIS ISSUE

Volume 58 No. 3

A BOOK THAT WILL MAKE HISTORY



LEGAL EDUCATION IN THE UNITED STATES

By
DEAN A. J. HARNO
University of Illinois

☆

An important part of THE SURVEY OF THE LEGAL PROFESSION, prepared and printed under the auspices of the American Bar Association.

Legal education is the responsibility of the profession. This history and evaluation of legal education will go far in clarifying the thinking of the profession, law schools and students on improving legal education!

The following Chapter Headings disclose the breadth and care with which this report has been prepared:

Our English Heritage
Formative Period
Laissez Faire Period
Case Method
Impact of Professional Organizations
Criticisms of Modern Legal Education
Legal Education—A Present Appraisement

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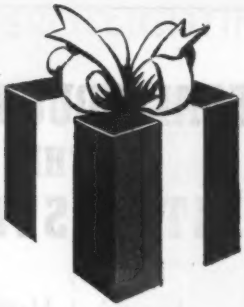

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Official Court Reporting With Electronic Recorder

By RAY HIRST

Official Court Reporter, Circuit Court, Eugene, Oregon

Condensed from Journal of the American Judicature Society, October, 1952*

SHORTHAND and steno-machine reporters have become more and more interested in the use of sound recording for official court reporting. This is especially true in the federal courts, where the work load is heavy and where there has been action and legislation undertaken toward the use of electronic sound recorders.

Ray Hirst with electronic equipment

Two of the oldest certified shorthand laws on the books are those of Iowa and Colorado. They require the reporter applicant to transcribe by typewriter with ninety-five per cent accuracy ten minutes of any two of the following: testimony dictation at 200 words per minute, jury charge at 180 words per minute, or solid literary matter at 150 words per minute.

Yet 200 words per minute is not nearly the limit of common speech. The reporter must approach 300 words per minute to be fully prepared for the fast witness. Reporting speed with two people speaking in cross-examination may well reach 400 or 500 words per minute.

No system of education or study, and no system of shorthand or machine reporting can ever satisfy the speed requirements. We have committed ourselves to a task that is impossible with human means. The human reasons for this may be:

(1) Reporter has inadequate speed.

(2) Reporter has inadequate education or experience.

(3) Reporter has below normal hearing.

(4) Reporter feels tired or dull.

There are seven other paramount causes of error and omission that mili-

* Original article condensed from 22 page printed booklet of the same title published by Mr. Hirst in July, 1952, which included many practical suggestions on the use and operation of sound recording equipment in court. Copies of this booklet may be secured direct from Mr. Hirst.

tate against the reporter and over which he has no control, such as,

(1) Room has poor acoustics.
(2) The reporter is not within hearing distance of the speaker (generally from 4 to 6 feet for good audibility).
(3) A speaker enunciates poorly, or is excited.
(4) A speaker has foreign accent or uses foreign words.
(5) A speaker uses technical nomenclature.
(6) Noise or coughing interfered with the spoken word.
(7) Two or more speakers interjecting or overlapping.

To compare the accuracy of the professional shorthand or machine reporter with the accuracy of the high fidelity tape recording, we must first commence by examining the effect of the reporter's four causes of error and omission on the recorder.

It is true that the reporter's education will now enter into the preparation of the transcript by typewriter. But, any error or omission must rest either upon the manner of typing and interpreting the recording, or upon the inadequate and unintelligible mumbling of the speaker. To make this more explicit, the court reporter trying to follow a speaker must "comprehend" the words spoken before he can select a word symbol to place upon his pad. However, the sound recorder records by vibration of air, and the vibration is recorded without any "comprehension" by the machine sound recorder. Therefore, the "comprehension" of the reporter takes place in the transcribing room when he listens to the recording and types what he hears. At his private office, he may make his decision of what has been said in a careful and calm manner, with the assistance of books or technical advice, and by repeating the recording as many times as he desires. No court reporter can take a moment to ponder what has been said in the trial of a case—a moment's hesitation, and he has fallen behind and dropped a phrase or become confused.

Let us now consider the outside causes of error and omission. Acoustics of a hard-walled room are not as disturbing to the low impedance broadcast microphone as to the human ear. Inasmuch as closeness of the microphone reduces outside noise and interference, we always prefer to get the microphone within four to six feet of the speaker. This, of course, increases ease of hearing and ease of transcribing.

The next four causes of error and omission are remedied by the addition of more microphones. In the event of unusual coughing from one of the parties, it is possible to switch off that microphone when spells or attacks occur.

It is also easy to adjust volume of microphones to pick up the low whispering witness, or to reduce the volume of the high screaming attorney. It is practical also to have this con-

Case and Comment
THE LAWYERS' MAGAZINE—ESTABLISHED 1894
AQUEDUCT BUILDING, ROCHESTER 14, N. Y.

EDGAR G. KNIGHT, *Editor*
GEORGE H. CHAPMAN, *Business Manager*

Advertising Representatives
NATIONAL PUBLISHERS REPRESENTATIVES, INC.
New York 17, N. Y., 114 East 47th Street
PLaza 3-5171

¶ Case and Comment is published bi-monthly by The Lawyers Co-operative Publishing Company, Rochester 14, New York, and Bancroft-Whitney Company, San Francisco 1, California. The publishers are not responsible for the personal views of the authors of signed articles. Their publication is not to be deemed an indorsement of any position taken on any controversial question.

rolled by an automatic volume control which does not require attention.

Perhaps the most satisfying of all uses of the sound recorder is the absolute ability to understand and transcribe what we term "dogfights". These quick objections and interjections of counsel cause the reporter major difficulty.

It is easy to see that the use of two separate recorders, one for one counsel, and one for another counsel, would make it possible to transcribe both counsel if both counsel talked at the same time. Then, in order to orient the respective time relation of these two speeches, it is necessary to place these two separate recordings on one tape, one on the right half, and one on the left half. These tracks running side by side can either be played together, or played one at a time for clarity.

The present method of dictating shorthand and steno-machine notes to a soft-disc recorder, turning this record over to the transcribing stenographer, and then rereading the transcribed typing for errors is in itself the cause of errors. If this sounds redundant, remember that the material is first written in shorthand by the reporter, it is dictated once by the reporter to a recorder, it is listened to and typed once by the operator or transcriber, and it is rechecked once by the reporter.

Obviously, the first writing by the reporter in shorthand is unnecessary, for he is again redictating it to the same spoken form it was received by him. In this process, he has introduced the eleven forms of error and omission I have described. The elimination of the reporter's work will mean a great increase in accuracy of the dictated record, and so in the transcript.

A shorthand reporter is so busy making the record that it is difficult to make notations of questions he wants to ask the witness regarding his testimony. Recording leaves the reporter free to make notations of names and places mentioned in the testimony so that the witness need not be interrupted but may be asked after leaving the stand.

Recording makes it possible to delegate the transcribing to competent legal stenographers who transcribe the work and present it to the reporter for checking against the original recording. This is an advantage to the attorney because it allows the reporter to reduce his work during busy periods

and thereby reduce or obviate overtime rates.

Monitoring to make certain that the recorder is functioning properly is carried on with very little effort. The most satisfactory system is the watching of a signal meter, the hand of which flits across the dial when a word is spoken. The needle therefore jumps in accordance with the dialogue, and is a direct indication of the recorded signal. This signal is not received from the recording head, but is received from a separate playback head a fraction of a second after the spoken word. In other words, we first make a tape recording, and then we immediately play back that recording. A switch enables us to listen to either the recording head, or the playback head. We monitor on the playback head because this is an absolute check either by earphones or by meter as to the volume and quality of our recording.

The reporter is free to make use of a time clock or numeral indicator to index witnesses, exhibits, and subjects. This makes possible an instantaneous location of any previous testimony. If the attorney during the trial notes the time of day when certain statements were made, inasmuch as the one hour reel of tape can be wound in forty seconds, they are easily and quickly located for playback after the trial.

Monitoring can be carried on during the trial by any of the court or counsel. An "endless" tape circle is used, which is continually circling through the recorder all day, always retaining the last thirty minutes of the recorded proceedings. A playback head may then be placed at intervals along the tape after this recording head. Push-button controls on respective tables of the courtroom would bring forth the signal from any one of these delayed playback heads. It would be desirable to have one head play back ten seconds behind the spoken words, one head play back twenty seconds behind the spoken words, one head one minute behind the spoken words, etc. It seems logical that the respective parties should be able to select whatever they wish to rehear by pushing the button with the time delay they believe has occurred since they heard those spoken words. This would be a great improvement over the present delay of court while the reporter searches for a statement, to say nothing of the incorrect reading by the reporter.

The playback of questions can be accomplished for the witness by turning up the volume of a loud speaker in the same manner as you turn up your home radio. But, it is the province of the court and counsel as to whether this should be done. Since this would seem like mocking counsel, it is my opinion that counsel would prefer to listen to his question and repeat it—perhaps reframing and omitting misspoken difficulties he first had.

Bear in mind that all this playback of prior proceedings is accomplished without any work on the part of the

The guardian who hid his mistakes . . . at his wards' expense!

(A true story based on an actual case)

A bank official became guardian for two minors when they inherited a $12,000 estate. Two fellow employees signed his bond for $24,000. The wards seemed well protected.

But some time later the bank closed. The guardian and both sureties lost their jobs.

Meanwhile, what had happened? The guardian had authorized bad loans. To prevent his employers from learning of his mistakes, he had covered the losses by paying off the loans himself—with funds belonging to his wards!

Was the money recovered from the guardian? Or from his personal sureties? No, not from any one of them; all three proved to be insolvent. ***The entire loss came out of the estate.***

Court records are full of cases like this. In each one, we have another instance of the inherent weakness of personal suretyship.

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An open letter to American lawyers and law students

reporter, and that the recorder never stops recording the repetitious playback. Every time that the question is repeated, it is again recorded and is not left out as when the reporter reads or talks.

Oftentimes the separate counsel during the trial of a case wish to hear different points read back by the reporter. With the above arrangement, each counsel or court may listen at any time to any separate head, or to the same head, for any delayed playback of the testimony. Inasmuch as the replaying is not intended for the jury, this system would prevent the double-emphasis which is objectionable to reading testimony over to the jury.

A further advantage of the tape recorder is the absolute verification of the typewritten transcript. All too often counsel is forced to rely upon a known inaccurate transcript because there is no further source of information than the self-serving reporter's notes. The actual "live" recording is an absolute and positive check of accuracy. If there should ever be statutory authorization for the reporter to "abstract" the record, then with the accurate, complete recording, he can perform a service to the court and counsel. But, before that time, any deletion is improper and unauthorized by statute.

Tape recording also allows very convenient splitting and segregation of work to several transcribing stenographers. Before recording, it was not possible to sublet without dictating, since notes could not be accurately transcribed by anyone other than the shorthand or machine writer.

The profession of court reporting is very beneficially affected by the use of sound recording. The impossible is made possible. Daily copy can be produced with more reasonable rates, and regular transcripts can be produced without unusual overtime work. The process of writing shorthand and dictating shorthand being eliminated, the work load is almost reduced to one-half the former amount. The work is more interesting since the testimony is covered only once, instead of three times. Notes are difficult to transcribe when they are cold, or the memory has faded, but the recording is as fresh as the original trial. In the event of sickness, transcribers who have not heard the recording can take over and competently produce a transcript with perfect accuracy. Death of a court reporter sometimes leaves a party with no possible means of perfecting the record; however, sound recording can be transcribed by any competent person. Recordings can be duplicated at high speed, given to any counsel, mailed to any counsel, played over the telephone wires, or even played over the radio if desired.

I sincerely suggest that sound recording is economical to use, is convenient to use, produces the first perfect transcript, and will promote the efficiency of the administration of justice in court.

The International Bar Association

By Eugene Le Fevre
Of the New York Bar

Member Editorial Staff,
The Lawyers Co-operative Publishing Company

IN THESE days when the problems of peace and security from war are uppermost in men's minds, it is heartening to observe that groups of professional men from countries all over the world have found it possible to unite in an organization, with a common aim of creating better understanding between members of their profession throughout the world. Such an organization is the International Bar Association, which originated in New York City on February 17, 1947.

The I. B. A. had its inception at the recommendation of the American Bar Association. It is felt that the success of the Inter-American Bar Association in the Western Hemisphere was the inspiration for it.

More than a decade and a half before 1947, the idea of an international bar association was germinating. The legal profession, at that time, was one of the few professions not having an association among its national societies. The probable explanation for this tardiness was the fact that national bar associations had begun to develop and take shape in the generation preceding 1932.

Thus, in October 1932 it was suggested to the ABA that a committee be established to study the "question of international Bar relations." The late Dean Wigmore was appointed chairman of the committee. After a study of extant organizations on an international scale, it was recommended that an attempt be made to affiliate with the Union Internationale des Avocats. Overtures to the latter group were made, and in 1936 affiliation was approved by the ABA. However these plans were disrupted when September 1938 proved to be the last meeting of the Union for over ten years, because of the commencement of World War II.

On June 1, 1944 a special committee was again established by the ABA to investigate the feasibility and desirability of an international bar association. The need of such an organization was found to be great, and the feasibility of forming it better than in 1936. Therefore, in the spring of 1946 the committee sent to the various bar associations of the world a draft plan of organization, together with a copy of the resolution of the ABA

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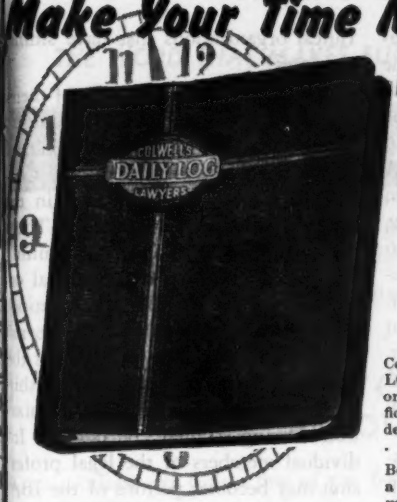

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House of Delegates approving cooperation among the organized Bars of the respective nations of the world. The response was so encouraging that the House of Delegates on July 2, 1946 authorized the President of the ABA to invite the associations to meet in New York City. At that meeting, which occurred on October 8, 9, 1946 representatives of national associations of twenty-one countries met. National bar organizations from ten other countries sent their endorsement. The meeting resulted in the approval of a revised draft of the constitution. And several months later representatives of twenty-three national bar associations met again in New York City to inaugurate the International Bar Association.

The purpose of the IBA, "a non-political organization," as stated in its Constitution, is as follows:

"To advance the science of jurisprudence in all its phases and particularly in regard to international and comparative law;

"To promote uniformity in appropriate fields of law;

"To promote the administration of justice under law among the peoples of the world;

"To promote in their legal aspects the principles and aims of the United Nations;

"To establish and maintain friendly relations among the members of the legal profession throughout the world;

"To cooperate with, and promote co-ordination among international juridical organizations that have similar purposes."

"Any national organization of members of legal profession" is eligible for membership in the IBA. "Members of legal profession" are said in the Constitution to be "persons versed in the laws or practitioners of law." There are further provisions for determining what organization is the "national organization," and alternative associations eligible for membership where no national organization exists. Besides the regular members, associate membership is open to any international organization having similar purposes. Individual members of the legal profession may becomes patrons of the IBA, being entitled thereby to attend the international conferences, and to participate in the sessions thereof.

A House of Deputies, composed of representatives from each member national organization, is the governing body of the IBA. The administrative affairs of the Association are handled by a twelve man Executive Council. This Council plans the international conferences, and also has the power to make agreements on behalf of the Association for cooperation with other international organizations having like aims. The offices of the IBA, which the Constitution provides must be "at or near the seat of the United Nations," is located at 501 5th Avenue, New York 17, N. Y. The various publications of the IBA include the plans for, and work done at, its conferences. Reports of the work done at these

conferences and papers presented, are presently being prepared in book form.

Up to the present time four international conferences have been held. The first was held October 19–23, 1947 in New York City. It was felt to have been satisfactory and to have gotten the organization off to a good start.

At the second conference, held at The Hague on August 15–21, 1948, lawyers from fifty-five nations gathered. One of the important subjects discussed was the progressive development of international law. No fewer than thirty-three papers were presented by members of various national organizations. In another symposium an animated discussion occurred on the disadvantage arising both from dual nationality and from statelessness. Other topics ranged from the problem of the "Restoration of Property Rights after World War II," to those of "Comparative Law." In all over 160 papers were presented, and many lengthy discussions occurred in the two plenary sessions and seventeen symposia.

Again, on July 19–26, 1950 in London, England, the third conference took place, with many new members participating. Most recently, the fourth conference of the IBA took place in Madrid, Spain, on July 16–23, 1952. Several new organizations applied for membership and were admitted, so that today the membership includes most of the national bar associations of the world outside of the Iron Curtain.

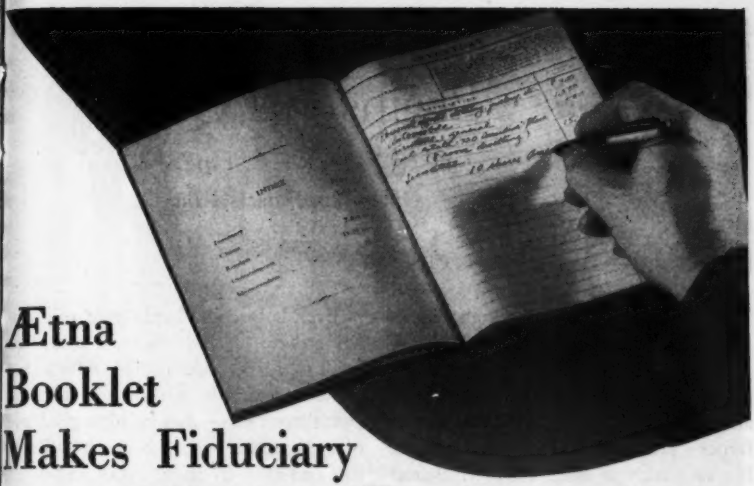
It was stated by Johannes Dron President of the IBA, 1948–49, and then President of the Netherlands Bar Association, in opening the second conference at The Hague that "the most important thing the International Bar Association can do at this present time is to promote the restoration of law and justice all over the world."

At the same conference, Dr. Ivan Kerno official representative of U. N. conference, closed his address with these words, "You are emissaries of international understanding and good will among the peoples of the world, and as leaders of your communities you can do much to promote the purposes of the United Nations in maintaining international peace and security, in developing friendly relations among nations, and in achieving international cooperation."

These sentiments are certainly echoed by members of the legal profession everywhere, and especially in the United States where the idea for the IBA was conceived. It is hoped that this and like organizations will have continued success, and be fruitful in its work to achieve the goal of international understanding and cooperation.

Integrity

It's amazing the heights a man can attain by remaining on the level.—*Hoard's Dairyman.*



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The Law Graduate Begins His Quest

By ROBERT C. HAYS
Of the San Francisco Bar

WAITING only long enough to pass the Bar examination, some law graduates are in a position to get into the practice almost immediately. They are fortunate. One has a place in his father's law firm; another comes of a family which is some firm's treasured client; another has the highly marketable qualification of being likely to draw several desirable clients to the office that bids him welcome. Still another young man requires no such circumstances—he has enough money to subsidize the early months or years of his own practice. In these happy instances the transition is fairly simple, and the graduate blessed with any such assurance is spared a difficult experience which, in normal times of supply and demand, can sometimes drag into a discouraging number of months—that of looking for a connection.

The following suggestions are not offered for the benefit of the new attorney whose course is charted so nicely, but for the one who must wrest out his own opportunity, encumbered with the necessity of self-support and dependent almost entirely upon his academic record and his own resourcefulness.

Even before you begin your pilgrimage around the law offices, it would be well to forget one notion which has grown pleasantly within you for the past three years—that being a graduate of a particular school is the be-all and the end-all. In some areas and with some law firms, this distinction may be controlling; but the chance is good that some day you will work under—or lose to—a lawyer who graduated from a school whose existence you now scarcely recognize. Once a young man telephoned me for an appointment concerning employment. His first words were, "I've just graduated from Harvard Law School" (or perhaps it was Yale or Michigan or Stanford). Such an approach, well meaning though it is, suggests a gentle illusion, in view of the large number of recent graduates from those and other excellent schools.

You proceed to canvass the law firms in the community selected. You have already followed up any personal leads you had but nothing has developed. Possibly your law school conducts an effective alumni placement service; if so, you probably put your name in there before you left the campus.

Many bar associations maintain a placement service, but in most metropolitan localities there is no dearth of candidates at a firm's own door, and there is a tendency to select them directly.

The names and addresses of the large law offices are already known to you—as they are to all of your competitors—and you most likely go there first. Unless you have an irresistible preference for big names and their prestige, however, it may have occurred to you that a broader experience and faster development may be possible for you in a small firm. Moreover, many of these smaller firms—off the beaten path—may be understaffed and relatively untouched by applications for employment. So you check the legal directories, especially those with biographical data, such as *Martindale-Hubbell.*

You want a connection, and quickly; but again wisdom suggests that association with a group of attorneys whose reputation is cloudy may hurt you in the long run. So before you accept any offer, you will investigate. Are these attorneys well regarded in the profession? How do they get along with each other, and how do they treat the people who work for them? This information is easier to obtain in professional circles than you might suppose; get it.

Before you began your journey around the law offices, you prepared a brief outline of your scholastic record, business experience, references and other personal details. This memorandum should certainly include your grades—if they can stand the light of day. Incidentally, the larger the firm, the more exacting will be the scrutiny of those grades. The outline should include your more substantial campus accomplishments but not the frothier ones: omit, or flick over, the fact you were head of the Glee Club or chairman of the Prom; but mention the class presidency. Emphasize any law review or other formal legal writing you may have done. Indication of political or religious affiliation should be omitted unless you have reason to believe it would be of interest in a particular situation. A disclosure of your age and marital and military status is generally in order. Don't count too much on a long list of dazzling references; many a prospect will rely exclusively on his own judgment of you.

Lastly, don't repose too much faith in the fact you have left an application on file. After a few weeks, unless a firm has heard from you to the contrary, it will assume you have found a place. And if a need then arises for an additional lawyer, the selection in most instances will not be from the applications on file but from the applicants who walked in or called in recently—unless, of course, the firm has already made a choice and has simply been waiting for an opening to occur. Maintain a tactful liaison.

Let's assume you are calling on a fairly good-sized firm in the setting you sometimes dreamed about in law

school: offices in one of the best downtown buildings; attractive furnishings throughout the reception room; possibly a portion of an extensive library visible as you enter; a nice-looking, pleasant voiced young woman at the reception desk. Should you ask to see the senior member of the firm? (Perhaps if *he* likes your looks, you're "in" —irrespective of what any other partner thinks.) Resist the temptation. He would probably accord you the courtesy that all really big men have for someone in your position; but the firm doubtless has a member designated to handle employment interviews and you'd better ask for him—your application would end up on his desk anyway.

When you begin the interview, keep in mind that selling the *standard equipment* isn't enough. Nearly all your competitors have that. You will be judged by the qualifications you have which are *above* standard. Foremost of these will be one over which you have little control: your personality and the impression you make. But do the best with what you have. This obviously includes neatness and propriety of dress. To create a sensational precedent, you might try being the first young graduate to appear at an office with a hat!

During the interview, take the initiative if it appears expected of you; otherwise just answer the questions, but don't be backward. Don't be overly bold nor overly deferential. Be straightforward, smile occasionally, and look the man in the eye! If you are asked what compensation you require, be definite. Don't say "anything". In quoting a figure, remember (especially in talking to a small firm) that there are many good offices which may need help—and which want to be completely fair—but which cannot at the moment afford to add much more weight to their overhead. It is the character of the men themselves, not the starting compensation, which is of more ultimate importance. But watch out for the venerable practitioner with the philosophy, "I starved for the first twenty years and what was good enough for me is good enough for you."

If you have any particular skill or experience or preference, such as engineering or accounting or tax work, mention it. The firm may need someone familiar with one of these subjects, especially if it is not so large as to be already departmentalized. If you are especially interested in some branch of the law, or have spent more than average time in its study, mention this fact. Any insistence, however, or

assignment to a specialty could limit your possibilities of employment.

Finally, be careful not to overstay your welcome; and as you leave, ask the attorney if he would mind your checking back occasionally. This is a reasonable suggestion and his reaction may furnish you with a gauge to the impression you have made.

If a successful connection in private practice is slow in coming, you may begin thinking of a legal position with the Government; or with a corporation or other institution that employs lawyers, either for pure legal work or in a semi-legal capacity. If you are certain you would be satisfied to be in government service more or less indefinitely, no question arises. But should you have in mind eventual entry to private practice, a measure of caution is advisable. The particular type of experience you acquire can have an important bearing on your prospects after you leave government practice. Several years on the legal staff of the Interstate Commerce Commission, for instance, would obviously leave you with some narrow and specialized qualifications. The same time spent in a District Attorney's office or with the Anti-Trust Division of the Department of Justice could be a valuable asset in private practice, as many successful practitioners have demonstrated.

With respect to becoming a "house lawyer" for a corporation, few attorneys will dispute that previous experience in the general practice is extremely desirable. Transit in the opposite direction, however, may prove exceedingly difficult, should the lawyer become discontented with corporate practice. With respect to a position where the work is only semi-legal, where but a small fragment of one's legal education is utilized, the average law graduate who takes such a job will probably suffer a feeling of frustration.

Eventually you will have covered all the possibilities you can think of for getting started in your profession. Either you have scored and are about to become a practicing attorney at last, or you have reached the stage where you wonder how much longer you can live on the good advice and good wishes which older lawyers are dispensing to you so generously. But sooner or later the opportunity will arrive, provided you keep looking for it. Tomorrow may be the day *your* name goes on the door of one of the best firms in town.

In Other Words, Hash

"There is no intimation", says the court in *Hotel Markham v. Stone*, — Miss —, 59 So2d 308, in holding meals served hotel employees out of left-overs were not subject to sales tax, "that certain comestibles salvaged by the hotel are, by a reincarnation through culinary cunning, christened anew under subtle and tempting euphemisms, and caused to appear upon its menus in disarming disguise."

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URGE AND MOTIVATION IN CRIMINOLOGY

By WLADIMIR ELIASBERG

Practicing Psychiatrist and President,
Association for the Psychiatric Treatment of Offenders

Reprinted from The Journal of Criminal Law, Criminology, and Police Science (Published by the Northwestern University School of Law) September-October, 1952

IT WAS in the reign of Edward I (1272–1307) that insanity was admitted as an excuse for crime. About fifty years later, in the time of Edward III, "absolute madness" became a complete defense to a criminal charge. The following centuries witnessed those well-known tests of "absolute madness" by which the mind of the insane was compared to that of a beast. This was the test of "raving madness"—a condition of not knowing right from wrong. Finally, in 1868, came the American contribution—the theory of the Irresistible Impulse.

Before the 19th century the psychiatrists had not been responsible for devising or administering the tests. The psychiatrists stepped in at the end of the 18th and the beginning of the 19th, centuries. They did not make the administration of the law and justice easier than it had been. By the middle of the 19th century, the psychiatrists, as adherents of a materialistic biology, refused to see anything in the criminal but a link in the universal and never interrupted causal chain, which, as the ancients used ironically to depict such abstruse causalism, leads from "the Ovum Ledae to the conquest of Troy."

We are in a dilemma which has more than one horn. In fact it has at least four. The theologians, moralists and philosophers, the sociologists, the lawyers and finally the psychiatrists seem to hold, each one, to a horn of the dilemma and to pull the criminal into four quarters.

Usually, when such a dilemma has existed for some time, it spends itself. That is, some practical way of cooperation is found, some common denominator turns up, and later centuries shrug their shoulders about what kept people divided during the "Dark Ages." Do we today still share the passions of the "reds" and the "blues" of ancient Byzantium? Whether or not we are still in the Dark Ages in Criminology is for us to decide. These Ages are the ones in which emotions and monomanias sway the field, while the periods of enlightenment are those of insight into the multifariousness of any problem and a practical tolerance of variant views.

The following paragraphs may show

how, at present, the ruling triumvirate in Criminology have stacked their cards: Psychiatry as the representative of the biological sciences; Sociology as the representative of society, and the Law as society's representative in her demands upon the individual. What follows may suggest when one or another partner in the triumvirate should be called upon.

1. The aim of theory in criminology is to connect causally the following "givens:" a given crime, a given space, a given time, a given criminal.

2. If the *crime,* the *where,* and the *when* are given—find the unknown criminal. *Approach of criminal tactics: "whodunit" approach.* Identification on the basis of isolated mental or physical marks; type of the wanted-for-description. Various methods, e.g., the Lie Detector or other methods to measure and identify isolated reactions.

3. If space, crime and types of criminals are given, the attempt may be to solve the problem in the light of the spirit of the times—of the cultural background; this is the *authropological approach.*

4. If culture (time), types of criminals, space factors such as milieu in general, ecological data such as downtown conditions (Chicago Loop, Broadway, New York, Open Cities) with their differential social situations are given, one tries to solve the crime statistically—the *ecological and sociological approach.*

5. Approach *via* dynamics and conflicts: *psychoanalytical approach.*

6. I wish to say that in 1932, Robert H. Gault, in his Criminology, Chapter 13, dealt with "Attitudes" as background of both our motives and our actions. Said he, "Many of our experiences have been forgotten as far as ability to recall them voluntarily is concerned, but their residue remains as the core of affective attitudes which are easily touched off and made effective when the appropriate occasion arises."

In the same year, 1932, my book appeared in which I developed the theory of motivations as prime movers behind our actions. The concept of motivation is for practical purposes, not in theory, identical with what American Psychology and Sociology call attitude. It should be mentioned that my field of experience was the German Criminal Court, while Gault had the American scene before his mind's eye.

The lasting orientation of the evil doer to his situation is called his motivation. Neither poverty nor premium on power, nor money nor any other environmental factor acts through the individual before he has built up a motivation.

Motivations are not built up by psycopaths. They are destroyed partially or completely in senility and in various types of psychosis at all ages. Partial destruction of motivation may justify the assumption of complete irresponsibility as action by irresistible impulse. Lagging motivation or the lack of it may be interpreted as cul-

pable negligence. The so-called sex psychopath may commit a punishable or non-punishable act under the influence of the sex impulse.

Motivation is the common ground on which psychiatrists and lawyers may meet to overcome the gap between biological presumptions and fictions, on the one hand, and those of the law on the other. The psychiatrist does not deny responsibility in the sense that it is conditioned by motivation.

7. The psychiatric approach considers the psycho-dynamics of a human being both from the inborn biological angle and that of acquired values or motivations. The specific domain of the psychiatrist is illness, either within the biological or the acquired motivational sphere. Neither the lawyer nor the psychologist is competent to judge pathology. Diseased motivation may be intricately connected with physical or mental illness, acute or chronic. For example, crimes committed in acute hyperinsulinism.

8. More often than not contradictions between experts are apparent. The emphasis may be on the statistical data on the part of one expert; on the individual case on that of the other. Difference in training may be in sociological orientation (the expert's motivation). A few words will suffice to illustrate, not the differences among lawyers and sociologists but their contributions to the understanding of crime and criminals. The lawyers' theory and practice of proof and admissibility of evidence is built on more or less refined insights into the motivations of the witnesses, the jurors, the prosecution, the defense, the court, and last but not least, of the defendant.

The sociologist's contributions, on the other hand, are a refined insight into the development of attitudes and motivations in groups of criminals. The outstanding name is that of Edwin H. Sutherland whose small but weighty book was published shortly before his death—"White Collar Crime."

The basic facts which we have learned, especially from the lawyers in the service of the O. P. A. and other new agencies, are ancient. The lawyers have been accustomed to dividing crimes into *mala per se* and *mala prohibita,* meaning that there are crimes which practically every man abhors and others are taken as a matter of course; they are more or less a matter of law enforcement and are considered crimes only as long as the statutes say they are crimes. For example, the prohibition laws.

Proud of their insights into the fields of criminal actions, the sociologists challenge the psychiatrists, and especially the psychoanalysts, such men as Aichorn, Alexander, Healy, Lindeand others on the subject of infant criminality and anti-social behavior "whatever that may be." The sociologists may ask: "Show us conclusively from your viewpoint how the behavior of the black marketeer differs from socially desirable behavior. If you cannot do that point to point, leave us alone."

It would seem, then, as though we are back at our starting point, the irreconcilable conflict of the Dark Ages. I may, however, vouchsafe at least for the psychiatrist: we, at any rate some of us, have learned our lesson. We accept the facts that the sociologists make so much of. They do not fight against values, and we psychiatrists understand that it is value and orientation toward values or motivations that form the empirical character of the criminal as of any other man. We psychiatrists no longer deny the pliability of the urges which only fifty years ago no "true scientist" was willing to admit.

Today, fortunately it is no longer the fashion to deny facts just because some theory may have difficulty with them. Have we then to this extent come out of the Dark Ages? Are we about to overcome monomanias? Let us hope we are. And all those involved: criminals, society, experts, counsel, may look forward to an age of better protection, more humaneness and more justice. These have always been characteristic of ages of enlightenment and scientific learnings.

Good Legal? Advice

One should not contest his wife's will, that is, until she is dead.—*Irving B. Grandberg, in Commercial Law Journal.*

AMERICAN BAR ASSOCIATION SECTION

The publishers of Case and Comment donate this space to the American Bar Association to permit it to bring to our readers matters which the Association deems to be of interest and practical help to the general practitioner.

THE 1953 ABA CONVENTION — BOSTON, AUGUST 20–28

IF THE 1953 Annual Meeting of the ABA in Boston—designated "The Diamond Jubilee Convention," with the theme of "Liberty under Law"—is not the best ever, it is not going to be the fault of the local Committee in charge. Under the joint chairmanship of Reginald Heber Smith and Allan H. W. Higgins this Committee, with the cooperation of the Massachusetts and Boston Bar Associations, is now perfecting long matured plans for one of the most outstanding Annual Meetings of the ABA.

The Boston Bar has contributed generously toward financing "The Diamond Jubilee Convention." Each of the eleven largest law firms in Boston has contributed $2,500 for this purpose, smaller firms have contributed from $1,500 down to $500, and substantial contributions have been received from many individual members of the Massachusetts and Boston Bar Associations. In addition, the City of Boston has contributed $5,000 from its Convention Fund for use in extending hospitality to the ABA and its related groups, such as the Conference of Chief Justices.

On the Sunday just prior to the formal opening of the Convention—August 23rd—the churches in the Back Bay, through the cooperation of the Council of Churches, have arranged suitable services for those attending the Convention. Archbishop Richard J. Cushing has generously arranged to have the traditional Red Mass celebrated at 10 a. m. in the Cathedral on Washington Street.

From 4 to 6 p. m. on Sunday members of the ABA will be the guests of the Massachusetts and Boston Bar Associations at a general reception at the Harvard Club of Boston, at which refreshments will be served. And on Sunday evening there will be a symphony concert by the Boston Symphony Orchestra, at the Hatch Memorial Shell. In the event of rain this concert will be moved to Boston Garden.

Since many attending the Convention will want to see the famous old "Constitution," arrangements have been made for visits to Charlestown Navy Yard for this purpose. In addition, attempts are being made to have the Secretary of Navy arrange operational schedules so that typical units of the Fleet—battleships, aircraft carriers, destroyers, and submarines—will

be at the Navy Yard during August 20–28.

Among other events planned for the entertainment of Convention visitors will be a play or pageant centering on John Adams. And there will, of course, be provision for those who can spare the time during busy Convention Week to visit the numerous historic places in and about Boston. For those who wish to visit historic Plymouth—which marks one of the actual beginnings of our nation that took root, survived the early hardships, and then flourished—arrangements have been made for such a visit via the new Diesel cars of the New Haven Railroad—each of which holds 88 passengers and makes the run in one hour.

So that those Convention visitors who find themselves with a free hour or so will be able to visit the interesting places within walking distance of their hotels, they will each be supplied with a new map of intown Boston, showing such places, with the Freedom Trail imprinted on each map. And to keep all who attend the Convention in touch with day-to-day developments a special Convention Bulletin—really a small newspaper—will be distributed to them each day, at their hotels. The Massachusetts Law Quarterly will also issue a special Convention Edition, containing a large number of historical pictures.

The Committee has also made very special arrangements for the entertainment of the various distinguished groups meeting with, or just prior to, the ABA Convention, such as the Conference of Chief Justices, the National Conference of Bar Examiners, and the Commissioners on Uniform State Laws.

The Convention proper will begin with the Opening Session of the General Assembly, on Monday, August 24, at 10 a. m. in the Grand Ballroom of the Hotel Statler. The Invocation will be offered by the Most Reverend Eric F. McKenzie, Auxiliary Bishop of Boston, and the address of welcome will be given by his Excellency Christian A. Herter, Governor of the Commonwealth of Massachusetts.

Judicial Retort Courteous

The judge had given his decision on a case and the attorney for the plaintiff rose and questioned it.

"I cannot allow you to re-open the case after I have given my decision," said the judge.

"Then I may as well sit down, Your Honor," replied the lawyer. "There's no use in knocking my head against a stone wall."

"I know there's no use in knocking your head against a stone wall," said the judge. "But I don't know any other person who could perform the operation with less personal injury than yourself!"—*United Mine Workers Journal.*

MARRIED BY J. P. "DURING GOOD BEHAVIOUR"

Reprinted from Journal of the American Judicature Society, February, 1952

FROM Milton E. Bachmann's column "From the Editor's Desk" in the *Michigan State Bar Journal,* comes this proof "that at the J. P. level the administration of justice has made less than turtle progress, and as a suggestion that the unauthorized practice of the law is no worse today than it was years ago."

"The story," says Probate Judge Benjamin W. Franklin, "was culled by one of my daughters from research material on county history."

Here is the tale:

In the early history of Mecosta County, Michigan, a new justice of the peace developed quite a law practice, drafting deeds, wills, mortgages and other papers. Then came the day that he was called upon to perform his first marriage. As the young couple approached, the justice arose, took off his hat and announced:

"Hats off in the presence of the Court."

This being done, he had the couple stand before him.

"Now raise your right hands," he ordered.

"You, John, do you solemnly swear, to the best of your knowledge and belief, that you take this woman to have and to hold for yourself, your executors, administrators and assigns for your and their use and behoof forever?"

"I do," answered the groom.

"You, Alice, do you take this man for your husband, to have and to hold forever, and do you further swear that you are lawfully seized in fee simple, are free from all encumbrances, and have good right to sell, bargain and convey to said grantee yourself, your heirs and assigns forever."

"I do," said the bride, somewhat doubtfully.

"The consideration will be $1.50, John," said the Court.

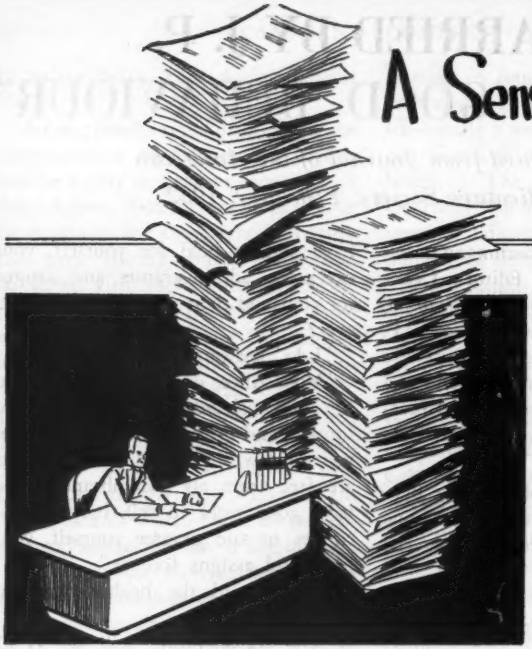
"Are we married?" asked the bride.

"Not until the consideration is paid," the justice replied.

After some digging, the $1.50 was produced and duly deposited with the Court. When the money had been carefully tucked in the judicial pockets, the judge announced:

"Know all men by these presents, that I, being in good health and of sound and disposing mind, in consideration of the sum of $1.50 to me paid, do by these presents declare you man and wife, during good behavior and until otherwise ordered by the Court, so help you God."

A Sensational Neve



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Anecdotes of the Jealous Mistress

By RICHARD PEETE

*Reprinted from Rocky Mountain Law Review, February, 1951**

MOSES HALLETT and James B. Belford were life-long friends from the early days of manhood. The former was Chief Justice of the Territorial Supreme Court of Colorado when the latter became an associate justice of that tribunal by the appointment of President Grant in 1870. When Judge Belford retired from the bench in 1875, he was admitted to the Bar of Colorado. He was elected to Congress in 1878. Hallett continued on the bench, territorial, state and federal, for the remainder of his life. Belford practiced law and engaged in literature. Hallett was a man of practical vision and got his share of worldly goods. Belford was impractical and did not get his portion, although he left a rich heritage. He could not even benefit by the sound advice of his friend in acquiring wealth.

One day, before the turn of the century when the prosperous Seventh Avenue section of Denver was nothing but a wild prairie, without a habitation in sight, Judge Hallett took Mr. Belford out there in his carriage to give him sound advice.

"Now Jim, anywhere you look you see some of the richest and cheapest land in Denver. Buy it Jim. Buy as much of it as you can. It will make you or your children rich some day.

"Mose, that is nothing but a dry desert."

"Jim, you don't understand. You must look to the future. All that land needs is water and good folks."

"Hell, Mose, that's all that hell needs —water and good folks."

The jury had been out for several days. Rumor said it stood eleven for conviction and one for acquittal. There would have been an early verdict, had it not been for the one dissenting juror. He was, according to rumor and his fellow jurors, as stubborn as a mule.

It was a celebrated murder case being tried before the late Flor Ashbaugh, district judge for the First Judicial District of the State of Colorado, at Littleton. The year was 1907. Judge Ashbaugh took great delight in

* This material originally appeared in "Anecdotes of the Jealous Mistress", copyright Rocky Mountain Herald.

telling and retelling what happened.

"After several days of deadlock among the jurors," Judge Ashbaugh used to say: "Word came to me that the jury might bring in a verdict before noon. I told the bailiff to tell the foreman of the jury that if a verdict was brought in before noon, the jury would be immediately discharged, but if they waited until after noon, the state would provide them their noonday meal, and to ask them what they wanted. Soon afterwards, the foreman of the jury sent word to send up eleven lunches and one bale of hay."

Lincoln's Admonition

Let every American, every lover of liberty, every well-wisher to his posterity, swear by the blood of the Revolution never to violate in the least particular the laws of the country and never to tolerate their violation.

Let every man remember that to violate the law is to trample on the blood of his father, and to tear the charter of his own and his children's liberty. Let reverence for the law be breathed by every American mother to the lisping babe that prattles on her lap; let it be taught in schools, in seminaries, and in colleges; let it be written in primers, spelling books, and in almanacs; let it be preached from the pulpit; proclaimed from legislative halls, and enforced in courts of justice. And in short, let it become the political religion of the nation, and let the old and young, the rich and the poor, the grave and the gay of all sexes and tongues and colors and conditions sacrifice unceasingly upon its altars.—*Abraham Lincoln* (*reprinted from Dicta*).

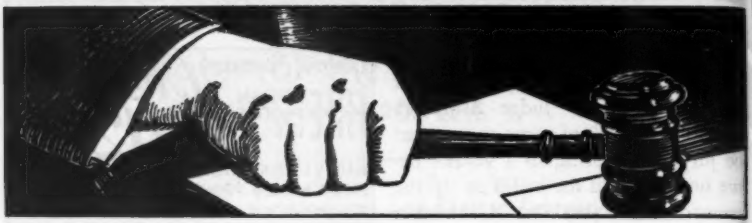
Hell Abolished

Here be joyful tidings. Judge Grant, of the Kings County court, will do away with Hell. Here is the story.

Much agitated and fearing great financial loss, there appeared before the honorable judge recently Otto H. Hell, thirty-six years of age, residing in Brooklyn.

"I tell you what, Judge it is—well, it is hell, that's what it is, to have Hell for your name. I want to change it to Hill. I'm going to open a large confectionery store and have a big electric sign. And suppose people observe 'H-e-l-l' spelled out in bright lights. That would be enough to kill it."

"Well, come back in five weeks and guess we can abolish Hell if the legal formalities are complied with," said the judge.—*From Case and Comment, November*, 1911.



Among the New Decisions

Accident, Hospital, etc., Insurance — *as affected by Workmen's Compensation benefits.* Recovery under a hospital and surgical expense policy was sought in Shealey v. American Health Insurance Corp., 220 SC 79, 66 SE2d 461, 27 ALR2d 942, an action by the insured against the insurer. No monetary loss as a result of his injury had been suffered by the insured, whose hospital and medical expenses were paid in accordance with the Workmen's Compensation Law.

A judgment on a verdict directed for the plaintiff was affirmed by the Supreme Court of South Carolina which, in an opinion by Associate Justice Fishburne, held that the defendant which, at the time of the issuance of the policy, had knowledge of the plaintiff's employment by the Aeronautics Commission, must be held to have had knowledge of the existing Workmen's Compensation Law covering identical loss; and that the defendant would not be relieved from liability under the policy even if it were regarded as one of indemnification only against loss.

An "Insured's receipt of or right to workmen's compensation benefits as affecting recovery under accident, hospital, or medical expense policy" is discussed in the appended annotation in 27 ALR2d 946.

Administrative Agency — *subpoena power.* Compliance with a subpoena duces tecum issued by the Minnesota Railroad and Warehouse Commission was sought in State v. Mees, — Minn —, 49 NW2d 386, 27 ALR 2d 1197. The subpoena was issued, not in quasi-judicial proceedings for adjudication of the rights of parties, but in an ex parte, nonadversary investigation initiated and conducted by the Commission on its own motion and for its future guidance. The subpoena was directed to the resident partner of a brokerage firm over whom the Commission had no regulatory jurisdiction, and ordered a production of books, records, and documents of the firm to determine the identity of the beneficial owners of a large block of transit company stock held in the firm's name.

An order granting the Commission's petition was affirmed by the Supreme Court of Minnesota which, in an opinion by Justice Christianson, held that

the pertinent statutory provisions conferred power on the Commission to conduct the investigation into the management of the carrier without joining it as a party in an adversary proceeding, and to issue the compulsory process in aid thereof against persons not subject to the Commission's regulatory jurisdiction, and that the subpoena so issued was not in violation of due process of law.

The "Power of administrative agency, in investigation of nonjudicial nature, to issue subpoenas against persons not subject to agency's regulatory jurisdiction" is the subject of the appended annotation in 27 ALR2d 1208.

Antenuptial Contract — *vacation of.* An antenuptial contract in which the prospective wife agreed to relinquish all claims against the property of her prospective husband, other than as provided therein, was sought to be set aside in Mathis v. Crane, 360 Mo 631, 230 SW2d 707, 27 ALR2d 873, an action in equity by the wife against her husband. It appeared in evidence that defendant had led plaintiff to believe that his property was worth about $40,000 when in fact it was worth about $200,000, and that defendant had promised plaintiff to make further provision for her regardless of the contract.

A decree setting aside the contract was affirmed by the Supreme Court of Missouri, Division No. 2, adopting the opinion of Commissioner Westhues, which held that the contract was properly set aside because of its unfairness, and because of the failure of the defendant to make a full and fair disclosure of his property, and that such vacation of the contract was not precluded by plaintiff's acceptance of benefits thereunder without full knowledge of the facts.

The appended annotation in 27 ALR2d 883 discusses the cases dealing with the existence and operation of a duty resting upon the parties to a premarital property settlement to disclose to one another the nature, extent, and amount of their property interests at the time of making the agreement.

Attractive Nuisance — *fire as.* Damages for injuries to a five-year-old boy were sought in Missouri Pacific Railroad Co. v. Lester, — Ark —, 242 SW2d 714, 27 ALR2d 1182, an action by his mother as next friend and in her own right. The boy had been severely injured by a fire which had been kindled by defendant's switchmen-employees to warm their hands, and had been left unguarded on defendant's railroad right of way near a crossing and near the boy's home and a place where the boy and other boys were accustomed to play. An employee of defendant had previously attempted to get the boy to return home. It also appeared that the child was of average intelligence and had been warned by his mother of the danger of fire.

Judgment on a verdict for plaintiff was affirmed by the Supreme Court of Arkansas which, in an opinion by Justice Ward, rejected defendant's contentions of reversible error, based on certain instructions as well as the alleged inapplicability of the attractive nuisance doctrine, the alleged absence of evidence to support a finding that the boy did not appreciate the danger, and the claim that the employees were not acting within the scope of their authority in kindling the fire.

"Fire as attractive nuisance" is discussed in the appended annotation in 27 ALR2d 1187.

Automobile Bailee — *duty as to contents.* The value of a fur coat stolen from plaintiff's automobile while parked in defendant's parking lot was sought in Drybrough v. Veech, — Ky —, 238 SW2d 996, 27 ALR2d 793. The petition alleged a bailment of the automobile for hire, but contained no averment of a bailment of the coat or of its presence in the car being called to the attention of the parking lot attendants.

A judgment rendered upon overruling defendant's motion for judgment notwithstanding a verdict for plaintiff was reversed by the Court of Appeals of Kentucky which, in an opinion by Justice Milliken, held that bailment of the automobile without calling attention to the coat did not constitute a bailment of the coat and imposed no duty upon the operator to protect it from theft.

The "Liability of bailee for hire of automobile for loss of, or damage to, contents" is the subject of the appended annotation in 27 ALR2d 796.

Automobiles — *passing other vehicle.* Damages sustained in an automobile accident which occurred while plaintiff was attempting to pass defendant's car were sought in Clayton v. McIlrath, 241 Iowa 1162, 44 NW2d 741, 27 ALR2d 307. It appeared in evidence that defendant was on the right side of the highway when plaintiff sounded his horn and then started to pass, and that it was not until the cars were practically abreast that the defendant suddenly turned to the left to pass a preceding car.

Judgment on a verdict for plaintiff was affirmed by the Supreme Court of Iowa, in an opinion by Chief Justice Garfield, which, overruling defendant's contention of contributory negligence as a matter of law, held that the plaintiff was not required, before attempting to pass, to be reasonably assured that the defendant heard his signal; that the circumstances of the case rendered inapplicable the rule that a motorist is not justified in persisting in his attempt to pass an overtaken vehicle failing to give way to the right; that defendant's duty under common-law principles to give an appropriate signal of his purpose to turn to the left to pass a car ahead, where such movement involved danger to a car approaching from the rear, was not abrogated by the alleged inapplicability to the instant situation of a statute dealing with hand signals;

and that defendant could properly be found by the jury to have been negligent in failing, before turning to the left, to keep a lookout for plaintiff's car.

The "Rights and liabilities as between drivers of motor vehicles proceeding in same direction, where one or both attempt to pass on left of another vehicle so proceeding" are discussed in the appended annotation in 27 ALR2d 317.

Automobiles — *rearview mirrors.* Damages sustained by a bus in a three-car collision were sought in Pacific Greyhound Lines v. Alabama Freight Lines, 55 NM 357, 233 P2d 1044, 27 ALR2d 1036, an action by the bus owner against the operators of the other two vehicles. Observing the approach from the opposite direction of a car and attached trailer, followed by a truck, near a narrow portion of the highway, the driver of the bus brought it to a stop partly off the pavement. Upon approaching the bus, the trailer-car slowed down or stopped and the truck ran into the rear end of the trailer, pushing it forward, careening into the bus.

A judgment based on a finding by the court of the absence of defendants' negligence was reversed by the Supreme Court of New Mexico which, in an opinion by Justice Compton, held that the defendants, as a matter of law, were guilty of negligence proximately resulting in the accident because the evidence, even when viewed in the light most favorable to them, showed a violation by the driver of the trailer automobile of a statute requiring an adequate rearview mirror, in addition to his failure to signal before stopping or reducing speed, and by the driver of the truck of a statute requiring the

maintenance of a specified distance from a preceding car.

The appended annotation in 27 ALR2d 1040 collects the cases in which the absence or inadequacy of a rear-vision mirror on a motor vehicle has been advanced as a ground of negligence affecting liability for injuries or damages in an accident in which the vehicle in question was directly or indirectly involved.

Boundary Strips — *rights derived from reciprocal use.* Removal of a fence erected by defendants on the boundary between the adjoining properties of the parties was sought in Plaza v. Flak, 7 NJ 215, 81 A2d 137, 27 ALR2d 324. For a period of about thirty-four years before erection of the fence, the parties and their predecessors in title had mutually used a narrow strip between their houses and on both sides of the boundary as a common alleyway without objection, agreement, or permission asked or given.

A judgment for the plaintiff was affirmed by the Supreme Court of New Jersey, in an opinion by Justice Burling, which, reviewing the elements essential to the acquisition of an easement by prescription, held that an easement in the alleyway had been so acquired by both parties. Although the plaintiff bore the burden of proof of the elements of prescription, he was held aided by a presumption of adverse use arising from uninterrupted user for twenty years or more.

The appended annotation in 27 ALR2d 332, entitled "Rights derived from use by adjoining owners for driveway, or other common purpose, of strip of land lying over and along their boundary," supersedes an earlier annotation on the subject.

Brokers — *commission on sale after termination of employment.* Messick v. Powell, 314 Ky 805, 236 SW2d 897, 27 ALR2d 1341, was an action for a declaratory judgment brought by vendors of certain realty to determine which of two real-estate brokers was entitled to a commission for the sale. An exclusive four-month agency and right to sell the property was originally granted to one broker by a contract which provided: "You shall be entitled to your commission if the above property is sold to any person or persons with whom you have already had negotiations for the sale of this property." A month and three days after termination of the four-month period, the property was sold to one whose accepted offer was made through another broker, but who had, during the exclusive agency period, made an unsatisfactory and rejected offer through the former broker.

Dismissal of the exclusive agent's counterclaim and cross-petition upon sustaining plaintiffs' demurrer thereto was reversed by the Court of Appeals of Kentucky which, in an opinion by Commissioner Stanley, held that the exclusive agency contract was properly interpreted as entitling the agent to a commission upon sale of the property within a reasonable time after the specified period to a person with whom

the agent had previously negotiated; that, under the circumstances, a month and three days was a reasonable period; and that the agent was not deprived of his right to the commission by the fact that a better and satisfactory offer was made by his customer through another agent.

The extensive appended annotation in 27 ALR2d 1348 deals with the question of the right of a broker to commissions, as affected by the fact that his agency had come to an end before the sale or other transaction had been consummated. Cases involving this point are considered, whether such ending was by expiration of the prescribed time, lapse of reasonable time, revocation, abandonment, or other means.

Continuing Insanity — *presumption of, in criminal cases.* The accused in State v. Garver, 190 Or 291, 225 P2d 771, 27 ALR2d 105, was convicted of murder, committed in the course of a robbery. The defense was insanity. Extensive evidence was presented on this issue, including his previous commitment to a state insane hospital and his acquittal of another crime on the ground of insanity. The court instructed the jury on the basis of the established "right or wrong" test. The court refused to give an instruction, requested by the accused, "that insanity having once been shown to exist continues until the contrary is made to appear." The propriety of this refusal was the principal issue in the case.

The Supreme Court of Oregon, in an opinion by Chief Justice Lusk, reversed the conviction because of the refusal to give the instruction on the presumption of continuing insanity. There was an extensive review of the authorities on this question, from which the court concluded that where the previous insanity is a permanent or chronic one as distinguished from mere temporary aberrations, it is presumed to continue until shown otherwise, and the trial court is under a duty to so instruct if requested. The instruction on the "right and wrong" test was approved, the court refusing to extend the insanity test to include irresistible impulse.

The appended annotation in 27 ALR2d 121 discusses the "Presumption of continuing insanity as applied to accused in criminal case."

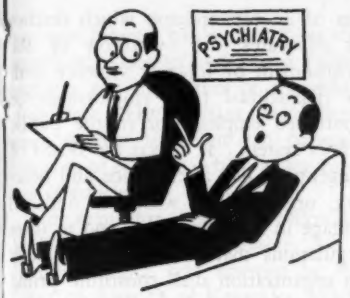
Criminal Action — *as bar to forfeiture, etc., of property.* In United States v. Gramer, 191 F2d 741, 27 ALR2d 1132, seizure and condemnation of interstate shipments of drugs, averred to be misbranded, were sought by the United States in libels under the Federal Food, Drug and Cosmetic Act. The claimant had previously been acquitted in a prosecution under the same statute for prior interstate shipments of the same preparation of drugs labeled and described in accompanying literature in the same manner.

A summary judgment of dismissal was reversed by the Ninth Circuit in an opinion by Circuit Judge Stephens, which held that the libels were not barred by the doctrine of res judicata, because of the different degrees of proof required in the former criminal and the later civil actions; or by the constitutional mandate against double jeopardy, since the subsequent action was not in punishment of the owner but for protection of the public health. That different shipments were involved in the criminal and condemnation actions was also relied upon by the court.

The "Conviction or acquittal in criminal prosecution as bar to action for seizure, condemnation, or forfeiture of property" is discussed in the appended annotation in 27 ALR2d 1137.

Dead Man's Statute — *application to spouse of disqualified witness.* Recovery of the amount due on a promissory note was sought in Beaupre v. Holzbaugh, 327 Mich 101, 41 NW2d 338, 27 ALR2d 532, an action against

"I wish you were a defendant instead of just a witness, I could get you off Scot Free!"



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the maker's personal representative. A statute barred testimony of an "opposite party" on matters equally within the knowledge of the deceased. For the purpose of tolling the statute of limitations, plaintiff sought to establish, by her husband's testimony, a partial payment made by the maker as the result of a transaction between the plaintiff and the maker, in the presence of the plaintiff's husband, whereby the maker procured an automobile for the husband, or the husband and plaintiff, at the wholesale price in exchange for a credit made by the plaintiff on the note. The husband participated actively in procuring the automobile and paid therefor from a bank account owned jointly by the plaintiff and her husband.

A judgment for the defendant was reversed by the Supreme Court of Michigan which, in an opinion by Justice Dethmers, held that payment, sufficient to toll the statute of limitations, could be in the form of services; and that the husband's part in the transaction did not constitute him the agent of his wife or create in him a direct pecuniary interest in the subject matter and outcome of the litigation so as to bar his testimony.

The extensive appended annotation in 27 ALR2d 538 discusses "Dead man's statute as applicable to spouse of party disqualified from testifying."

Disloyal Schoolteacher — *dismissal or rejection of.* A New York statute provides that a person who teaches or advocates, or is knowingly a member of an organization which teaches or advocates, the overthrow of the government by force or violence shall be disqualified from employment or continued employment in the public school system. It directs the Board of Regents to list, after notice and hearing, organizations which it finds to engage in these activities, and to issue regulations that membership in such an organization shall constitute prima facie evidence of disqualification. An action for a declaration that the statute was invalid and for an injunction restraining the Board from enforcing the statute was decided in favor of the Board by the highest court of New York.

In an opinion by Justice Minton, six members of the United States Supreme Court held in Adler v. Board of Education, 342 US 485, 96 L ed 517, 72 S Ct 380, 27 ALR2d 472, that the statute did not violate the constitutional rights of freedom of speech and assembly and that the statutory presumption described above did not violate due process.

The title of the appended annotation in 27 ALR2d 487 is "Dismissal or rejection of public schoolteacher because of disloyalty."

Electric Wires — *injury to child climbing tree.* Damages for personal injuries sustained by an eleven-year-old boy were sought in Kentucky Utilities Co. v. Garland, 314 Ky 252, 234 SW2d 753, 27 ALR2d 198, an action against a utility company engaged in the distribution of electricity. The

boy was injured while sitting on the branch of a tree located near a public highway and the homes of a number of children. High-voltage, uninsulated wires of the defendant ran between branches of the tree, which at the time was in full leaf.

Judgment for plaintiff, following denial of defendant's motion for a directed verdict, was affirmed by the Court of Appeals of Kentucky which, in an opinion by Commissioner Stanley, held that the tree with low-hanging branches, although harmless in itself and not ordinarily within the attractive nuisance doctrine under which the case was tried, could reasonably be expected to attract children accustomed to play in the neighborhood and become an attractive nuisance when permitted to be charged with electricity. Absence of actual knowl-

edge by defendant of the habits of the children to play around the tree was held not to require a directed verdict for defendant, since that fact could reasonably have been anticipated.

The extensive appended annotation in 27 ALR2d 204 is concerned with the right of a child who is injured by electric wires, while in the process of climbing a tree, to recover for such injuries.

Federal Courts — *diversity of citizenship jurisdiction.* In Gavin v. Hudson & Manhattan Railroad Co., 185 F2d 104, 27 ALR2d 739, a railroad incorporated in both New York and New Jersey was sued by a citizen of New Jersey in the federal court for the district of New Jersey. The plaintiff, asserting jurisdiction on the basis of diversity of citizenship, declared against the railroad as a New York corporation. A dismissal of the action for lack of diversity of citizenship was reversed by the Third Circuit in an opinion by Circuit Judge Goodrich, which held that the New Jersey incorporation did not defeat the jurisdiction of the federal court in New Jersey.

The appended annotation in 27 ALR2d 745 discusses "Federal diversity of citizenship jurisdiction where one of the states in which multistate corporation party litigant is alleged to be incorporated is also state of citizenship of opponent."

Firemen, Policemen — *disability benefits.* Judicial relief from the find-

"I couldn't afford a mouth-piece, so I brought my wife."

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ings and orders of a Board of Trustees and a Firemen's Pension Commissioner who denied plaintiff's application for a pension, and the recovery of disability pension instalments were sought in Board of Firemen's Relief Fund v. Marks, — Tex —, 242 SW2d 181, 27 ALR2d 965, an action by a fireman who claimed his hypertrophic arthritic condition to have resulted from a series of injuries sustained by him in the performance of his duties, or from exposure, while wet, to extreme cold for long periods of time, or from a combination of the injuries and exposure. The applicable statute provided for a pension to a fireman becoming disabled "while in and/or in consequence of, the performance of his duty."

A judgment granting the relief prayed for was reversed by the Supreme Court of Texas which, in an opinion by Justice Calvert, held that the statute required a causal connection between the disability and the performance of the fireman's duties, and that the administrative decisions found reasonable support in substantial evidence.

The appended annotation in 27 ALR2d 974 discusses "Causal connection between fireman's or policeman's performance of official duties and his disability, for purpose of recovering disability benefits."

Fraud — *false representations as to income, etc.* Rescission of a contract for the purchase of summer resort realty was sought in Spiess v. Brandt,

"Since your aunt's wealthy cat left no will the whole estate goes to next of kin."

230 Minn 246, 41 NW2d 561, 27 ALR2d 1, by the purchasers on the ground of fraud. The trial court found that the vendors had represented to the prospective purchasers that the vendors were making "good money" out of the resort, that the representation was known by the vendors to be untrue, was made for the purpose of inducing purchase of the property at an excessive price, was relied upon by the purchasers, and was a material and inducing factor in entering into the contract.

Rescission of the contract was affirmed by the Supreme Court of Minnesota, in an opinion by Justice Matson, which, making an extensive review of the applicable principles of law, held that the evidence, though conflicting, was sufficient to sustain the findings and that the findings were sufficient for rescission. Circumstances emphasized by the court included the persistent withholding by the vendors of their account books notwithstanding the expressed desire of the purchasers to inspect the same, the disparity in the business experience of the mature vendors and the youthful purchasers, and the year-by-year loss of money in the operation of the resort by the experienced vendors.

The extensive appended annotation in 27 ALR2d 14 discusses "False representations as to income, profits, or productivity of property as fraud."

Highway Accident — *ownership of vehicle.* In Louisville Taxicab & Transfer Co. v. Johnson, 311 Ky 597, 224 SW2d 639, 27 ALR2d 158, damages were sought for injuries sustained by one pushing a cart in a city street and struck by a taxicab approaching from the rear. The automobile did not stop but evidence was introduced to show that defendant had a franchise to operate taxicabs at the time and place, that the cab was painted the peculiar color used by defendant, that defendant's telephone number was at its usual place at the rear of the cab, and that the busy signal was lighted. On behalf of defendant, it appeared in evidence that about 160 of defendant's 200 cabs in operation at the time of the accident were examined without finding traces of an accident.

Judgment on a verdict for the plaintiff was affirmed by the Court of Appeals of Kentucky, which, in an opinion by Commissioner Van Sant, held that the evidence established a prima facie case of ownership of the taxicab by defendant and of its operation by an agent of defendant within the scope of his employment; that such prima facie case was not refuted by defend-

ant's evidence; that the record contained no evidence of negligence on the part of the plaintiff who was pushing the cart in a lane of traffic where he had a right to be and who was not under a duty to keep a lookout for cars approaching from the rear; and that the questions of negligence of defendant's agent and its proximate result were properly submitted to the jury.

"Presumption and prima facie case as to ownership of vehicle causing highway accident" is the subject of the appended annotation in 27 ALR2d 167.

Illegitimate Child — *as "heir."* Construction of a will providing for division of the residuary estate "among my heirs in the manner provided by law" was sought in Re Tousey's Will, 260 Wis 150, 50 NW2d 454, 27 ALR2d 1228. In addition to brothers, sisters, nephews, and nieces, the testator was survived by two illegitimate children born before execution of the will, and adjudged to be children of the testator. A statute provided that every illegitimate child shall be considered as heir of the person adjudged to be the father, and shall inherit his estate in the same manner as if born in lawful wedlock.

A judgment excluding the illegitimate children as beneficiaries under the will, was reversed by the Supreme Court of Wisconsin which, in an opinion by Justice Martin, held that the word "heirs" means those to whom the law assigns intestate property, that the testator is presumed to have known the law under which his illegitimate chil-

"I'd like something that will make 12 jurors decide in my favor."

dren are considered his heirs, and that extrinsic evidence of testator's conversations with the scrivener was not admissible to show a different intention.

The "Right of illegitimate to take under testamentary gift to 'heirs'" is discussed in the appended annotation in 27 ALR2d 1232.

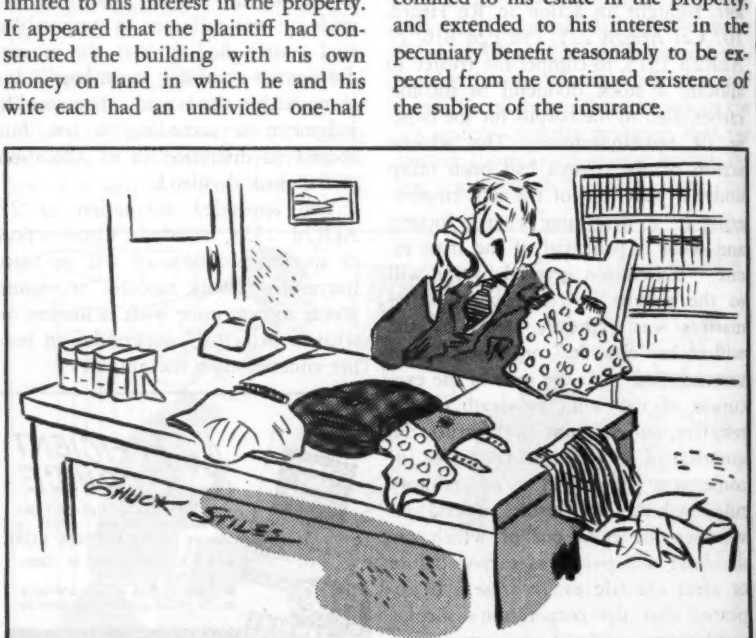
Income or Principal — *power of executor or trustee to determine.* A life tenant to whom substantially all the income of a testamentary trust was left, brought an action in Re Heard, 107 Cal App2d 225, 236 P2d 810, 27 ALR2d 1313, to compel the trustee to allocate a stock dividend to income, rather than to the corpus for the benefit of remaindermen. The adverse action of the trustee had been taken under a provision of the will empowering it "to determine what is income and what is principal of the trust estate." Discretion granted by the will to the trustee in reference to other matters was expressly stated by the will to be "absolute" or "absolute and uncontrolled." At the time of the execution of the will, the death of the testatrix, and creation of the trust, the question of allocation to corpus or income was subject to a nonstatutory rule making the result depend on whether the fund out of which the dividend was paid was earned before or after the life estate arose. It appeared that the corporation's surplus earnings accumulated after creation of the trust were greater than the value of the stock dividend.

A decree instructing the trustee to allocate the stock dividend to income was affirmed by the California District Court of Appeal, Fourth District, which, in an opinion by Justice Griffin, held that the testator was presumed to have known and made the will with reference to the law in effect at the time; that the discretion of the trustee as to allocation to income or principal was not uncontrolled but subject to a rule of reasonable exercise in accord with sound judgment, the law, and the intent of the testator; and that the evidence was sufficient to support the trial court's finding that the trustee did not act according to its best judgment, within the bounds of reasonable judgment, or according to law, but abused its discretion in its allocation of the stock dividend.

The appended annotation in 27 ALR2d 1323, entitled "Construction of specific provision of will or trust instrument giving executor or trustee power to determine what is income or what is principal," supersedes an earlier annotation on the subject.

Insurable Interest — *in spouse's property.* Recovery for damage caused by the collapse of a roof was sought in North British & Mercantile Insurance Co. v. Sciandra, 256 Ala 409, 54 So2d 764, 27 ALR2d 1047, an action against an insurer by the insured on a policy covering loss by lightning or windstorm. The defendant claimed that the cause of the loss was improper construction and accumulation of water on the roof, and that in any event plaintiff's right of recovery was limited to his interest in the property. It appeared that the plaintiff had constructed the building with his own money on land in which he and his wife each had an undivided one-half interest, and that the building was used by him for support of his wife and family with the knowledge, consent, and assistance of the wife.

Judgment on a verdict for the plaintiff was affirmed by the Supreme Court of Alabama, which, in an opinion by Justice Lawson, held that the husband was presumed to have intended a gift to his wife of an undivided one-half interest in the building, but that the husband's "insurable interest" was not confined to his estate in the property, and extended to his interest in the pecuniary benefit reasonably to be expected from the continued existence of the subject of the insurance.



"No, Dear . . . I wanted you to pack my 'Briefs'— Those papers I prepared last night . . ."

The appended annotation in 27 ALR2d 1059, entitled "Insurable interest of husband or wife in other's property," supplements an earlier annotation on the subject.

Judgment — *limitations period, tolling of.* An assignee of a judgment sought in Stanley C. Hanks Co. v. Scherer, 259 Wis 148, 47 NW2d 905, 27 ALR2d 832, to be substituted as party plaintiff with the right to sue upon the judgment. The judgment had been rendered more than twenty years previously. A statute provided: "No execution shall issue or any proceedings be had upon any judgment after twenty years from the rendition thereof." Another statutory section provided for the tolling of the limitation for beginning an action in case of absence of the debtor from the state. The judgment debtor was a nonresident of and absent from the state at the time of the rendition of the judgment and for a long period thereafter. During the twenty-year period, no execution had been issued or proceedings involving the judgment had, except in a court having jurisdiction of a trust estate, which declared a lien on the interest of the judgment debtor as a remainderman. The life tenant died after lapse of the twenty-year period.

Orders denying the substitution and discharging the judgment of record were affirmed by the Supreme Court of Wisconsin, which, in an opinion by Justice Fairchild, held that the statutory provision for tolling the limitations period was inapplicable to a cause of action on a judgment which, under terms of the statute above set forth, was extinguished after lapse of the twenty-year period; and that the lien on the interest of the judgment debtor as remainderman thereupon ceased to exist.

The "Absence of judgment debtor from state as suspending or tolling running of period of limitations as to judgment" is discussed in the appended annotation in 27 ALR2d 839.

Lessor — *retention of advance rental payments.* Repossession of leased premises and recovery of unpaid rent trebled were sought by the landlord in Brooks v. Coppedge, 71 Idaho 166, 228 P2d 248, 27 ALR2d 645, an action of unlawful detainer. Upon execution of the lease, the tenant gave the landlord a deposit which the lease stated to be for rent for the last six months of the lease. Express provision was made for repayment of the deposit upon exercise of an option to purchase or destruction of the property by fire. A default in payment of rent occurred before the last six months of the lease.

A judgment for the tenant was reversed by the Supreme Court of Idaho, which, in an opinion by Chief Justice Givens, held that, under the terms of the lease, the deposit could not be regarded as security to be applied to defaulted rent obligations, but could properly be retained by the landlord, who was entitled, in addition thereto, to judgment for unpaid rent to the date of the judgment. The lease was ruled not to be terminated or abandoned by the landlord by institution of the action of unlawful detainer, or by issuance of a writ of attachment, or by an excessive levy or locking of the leased premises by the sheriff thereunder.

The appended annotation in 27 ALR2d 656 undertakes to review the cases which determine the right of a lessor to retain advance rental payments made pursuant to a requirement of the lease, as affected by a breach of the lease by the lessee by failure to pay the rent for a previous period.

Liability of Innkeeper — *injury to guest in hall, etc.* Damages for personal injuries were sought in Goldin v. Lipkind (Fla) 49 So2d 539, 27 ALR 2d 816, against an innkeeper by a paying guest. The complaint alleged, among other circumstances, that the plaintiff was injured as a proximate result of defendant's negligence in failing to light a dark hallway leading to plaintiff's room and in leaving a mattress in the hallway over which plaintiff tripped. A statute provided that every hotel shall be properly light-

"I'd like to see some party dresses—I'm appearing in court as a 'Third Party.'"

ed and conducted with strict regard to the safety of guests.

A judgment for defendant upon the ground of the insufficiency of the complaint was reversed by the Supreme Court of Florida, Special Division B, which, in an opinion by Justice Chapman, held that an innkeeper, though not an insurer, is under a duty to exercise ordinary care to keep hallways reasonably well lighted and free of obstructions.

The appended annotation in 27 ALR2d 822 discusses the question of the liability of an innkeeper for injuries sustained by a guest while the latter is using a hallway or similar passageway of the innkeeper's establishment.

Mechanic's Lien — *sufficiency of notice, claim, etc.* Enforcement of a mechanic's lien was sought in Kendall v. Martin, — W Va —, 67 SE2d 42, 27 ALR2d 1163, a suit in equity by a subcontractor. The notice of the lien served upon the owner followed the statutory form and, in the space provided for a description of the nature of the subcontract, used the words "completion of the heating and plumbing" on certain identified property of the owner.

A decree sustaining the owner's demurrer to the bill on the ground of the insufficiency of the description of the nature of the contract in the notice was reversed by the Supreme Court of Appeals of West Virginia which, in an opinion by Fox, P., held the notice to be in substantial compliance with the statutory requirements.

The appended annotation in 27 ALR2d 1169 discusses "Sufficiency of notice, claim, or statement of mechanic's lien with respect to nature of work."

Oral Promise to Buy Land for Another — *rights under.* Equitable relief based upon a constructive trust was sought in Harris v. Dunn, 55 NM 434, 234 P2d 821, 27 ALR2d 1277, an action against defendant real-estate broker who was alleged in the complaint to have purchased certain realty for himself, taking title in the names of defendant grantees in violation of an oral agreement by the broker to purchase the property for the plaintiffs. A statute provided: "Any agreement . . . authorizing or employing an agent or broker to purchase or sell lands . . . for compensation, shall be void unless the agreement, or some memorandum or note thereof shall be in writing . . . ."

A dismissal of the complaint was reversed by the Supreme Court of New Mexico which, in an opinion by Justice Sadler, held that equitable relief was

not precluded by the statute which, in extension of the statute of frauds, was intended to nullify oral agreements to pay a commission, and not to permit its use as an instrumentality of fraud.

The appended annotation in 27 ALR2d 1285, entitled "Rights of parties under oral agreement to buy or bid in land for another," supplements earlier annotations on the subject.

Petition, etc. — *signer's withdrawal.* Annexation of adjacent territory to a rural high school district was sought in State v. Montrose Rural High School District, 169 Kan 653, 219 P2d 1071, 27 ALR2d 599. A statute authorized the annexation upon application of a majority of the electors of the adjacent territory to the district board, approval by the board, and consent by the county superintendent of public instruction. The application was signed by the requisite number of electors and approved by the board, but a number of the signers withdrew their names before consent by the superintendent, who disregarded the attempted withdrawals and gave his consent.

A judgment rendered upon sustaining a demurrer to the petition was affirmed by the Supreme Court of Kansas, which, in an opinion by Justice Smith, held that the consent of the superintendent was addressed to his supervisory power over actions of the

"In view of the fact that your husband's will stipulates you do not inherit this money until your fortieth birthday, Mrs. Evergreen, I'll—er—ahem—have to ask you to cooperate just a little."

school board, and not to the sufficiency of the application, and that the withdrawal could therefore be sufficient only if made to the school board before their approval of the application and submission to the superintendent.

The appended annotation in 27 ALR2d 604, entitled "Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor," supplements an earlier annotation on the subject.

Preferred Stockholders — *rights as to passed dividends.* An adjudication of his right to dividends for certain years was sought in Guttmann v. Illinois Central Railroad Co., 189 F2d 927, 27 ALR2d 1066, an action against a corporation by a holder of noncumulative preferred stock. A declaration of such dividends had been withheld by the corporate directors notwithstanding a net income sufficient therefor. For a subsequent year, dividends were declared on both the common and preferred stock.

A dismissal of the complaint was affirmed by the Second Circuit in an opinion by Circuit Judge Frank, which, referring to the absence of a local statute or decision controlling the question and to the sufficiency of evidence to support the trial court finding that the passing of dividends for the years involved was made in the exercise of a sound business judgment, held that the directors could validly declare a dividend on the common and preferred stock for a subsequent year without a payment of past preferred stock dividends.

The "Rights of preferred stockholders as to passed or accumulated dividends in going concern" is discussed in the extensive appended annotation in 27 ALR2d 1073.

Prenatal Injury — *as ground for action.* Damages for personal injuries were sought in Woods v. Lancet, 303 NY 349, 102 NE2d 691, 27 ALR2d 1250, on behalf of an infant who was alleged in the complaint to have sustained such injuries, by defendant's

negligence, while in his mother's womb during the ninth month of her pregnancy, that he was born permanently maimed and disabled.

Dismissal of the complaint was reversed by the Court of Appeals of New York, in an opinion by Justice Desmond, which, limiting its decision to a prenatal injury to a viable fetus, subsequently born, overruled Drobner v. Peters, 232 NY 220, 133 NE 567, 20 ALR 1503, 21 NCCA 702, and held a cause of action to have been stated by the complaint.

The appended annotation in 27 ALR2d 1256, entitled "Prenatal injury as ground of action," supplements an earlier annotation on the subject.

Pretrial Discovery Proceedings — *disclosure of witnesses.* Evtush v. Hudson Bus Transportation Co., 7 NJ 167, 81 A2d 6, 27 ALR2d 731, involved consolidated actions in which damages were sought for the death of two riders of a motorcycle killed in a collision with a bus. Notwithstanding the answer to an interrogatory falsely stating the defendants did not know the names and addresses of witnesses to the accident other than themselves, such witnesses were permitted, over plaintiffs' objections, to give testimony prejudicial to plaintiffs.

Reversal of judgments on verdicts of no cause of action was affirmed by the Supreme Court of New Jersey which, in an opinion by Justice Ackerson, held the admission of the testimony to be error.

"Allowing witnesses to testify after failure of litigant to disclose their

"Now—which one of you is the party of the first part?"

names and addresses in response to request therefor in pretrial discovery proceedings" is the title of the appended annotation in 27 ALR2d 737.

Railroads — *injury to pedestrian at obstructed crossing.* Damages for personal injuries sustained by plaintiff at a city railroad crossing were sought in Stratton v. Southern Railway Co., 190 F2d 917, 27 ALR2d 363, an action against the railroad company. It appeared in evidence that the cars were obstructing the crossing for a longer period than permitted by city ordinance; that the attachment of an engine to the cars was not visible at the crossing; and that the plaintiff, attempting to pass between the cars, was injured by their sudden movement without warning. Evidence of a long-standing custom of pedestrians to climb between cars obstructing the crossing was excluded by the trial court.

Dismissal upon conclusion of plaintiff's evidence was reversed by the Fourth Circuit, in an opinion by Chief Justice Parker, which held that evidence of the long-standing custom was competent; that a railroad company chargeable with notice of the custom was under a duty not to move the cars without a warning signal; and that, in view of the evidence, the questions of negligence, contributory negligence, and last clear chance were for determination by the jury.

The appended annotation in 27 ALR2d 369 deals with the liability of a railroad for injury to, or death of, an adult pedestrian attempting to cross over, under, or between the cars of a train obstructing a crossing, whether public or private, including both cases where the train is moved while the pedestrian is attempting to cross, and those where the train remains stationary.

Retired or Disabled Public Employees — *increase of pension, etc.* Krebs v. Teachers' Retirement System, 410 Ill 435, 102 NE2d 321, 27 ALR2d 1434, was a taxpayer's suit in which an injunction against the payment of public funds under a statutory amendment authorizing an increase in the age and disability retirement allowances for teachers retired prior to the amendment was sought.

A decree dismissing the complaint for want of equity was affirmed by the Supreme Court of Illinois, which, in an opinion by Justice Maxwell, upheld the constitutionality of the amendment. Specifically, the court rejected plaintiff's contentions of unconstitutional authorization of extra compensation to public servants after rendition of the service; of unconstitutional authorization of the payment of public funds to private persons without any or adequate consideration, thereby extending the credit of the state to private persons; and of the unconstitutional grant of special and exclusive privileges to persons not of a separate and distinct class for the purposes intended.

The "Validity of legislation providing for additional retirement or dis-

ability allowances for public employees previously retired or disabled" is discussed in the appended annotation in 27 ALR2d 1442.

Right to Contribution — *interest.* Contribution and interest from the date of payment were sought in Employers Mutual Liability Insurance Co. v. Derfus, 259 Wis 489, 49 NW2d 400, 27 ALR2d 1264, an action by an insurer who had paid the full amount of a settlement for damages suffered by guests in the insured's automobile upon its collision with another automobile. The defendants, driver of the latter car and his insurer, had been requested but refused to join in the settlement or pay any portion thereof. Defendant-motorist's testimony as to driving at a speed of twenty miles per hour was contradicted by police officer's evidence of skid marks.

Judgment for plaintiff on a special verdict finding defendant-motorist causally negligent was affirmed by the Supreme Court of Wisconsin, which in an opinion by Justice Broadfoot, held that the jury's conclusions were supported by credible evidence, and that the plaintiff was entitled to contribution and interest upon the amount thereof.

The "Rights of one entitled to contribution to recover interest" is discussed in the appended annotation in 27 ALR2d 1268.

Not A Good Custom

"There are charges in the administrator's account to the amount of $12.20, paid for spirits used at the auction. These charges are wholly inadmissible. It is said to be customary to furnish spirits on such occasions. But we are satisfied, upon reflection, that no custom, however ancient it may be, or however widely it may have prevailed, can sanction such charges. We see no reason why such an expense should be thrown upon an estate, unless it be that a free distribution of ardent spirits has a tendency to render the sales more productive. But the furnishing of spirits for that purpose is neither honest nor honorable. It is time the custom was abolished."—Richardson, C. J., in *Griswold vs. Chandler,* NH Reports 5, page 492 October term—1831.

A Prophetic Will

David Hassenfeld, of the Providence, R. I. Bar, recently received a call from one of his clients, a very independent elderly woman, to come in and "legalize" her will. He found that she had in all seriousness drawn up the following:

"I, J..... S....., being of sound mind and body hereby bequeath to my daughter, B..... S....., my only relative who cares for me and whom I love, all my property, real and personal. Said property includes an Accident Insurance policy. When I die, it will be by accident, and Dr. Jones will testify to the fact that I died by accident. . . ."

A Rose By Any Other Name

By JUDGE HARRY TENENBAUM

In Borough of Avalon v. Niethammer, 93 A2d 65,
Cape May County Court, New Jersey

THE DEFENDANT . . . appeals de novo from a conviction before the Municipal Magistrate of the Borough of Avalon for a violation of its Ordinance No. 235 as amended by Ordinance No. 264.

The pertinent portion of the original ordinance is as follows: "No person . . . engaged . . . for the purpose of collecting garbage . . . shall dump, place, keep or store . . . garbage . . . within . . . Avalon." The amended ordinance provides: "No person . . . shall dump, place, keep or store garbage . . . within the territorial limits of the Borough of Avalon."

At the hearing upon appeal the defendant admitted on the day in question he had dumped a can of garbage in a hole in the ground in the rear of his residence, which hole he had dug for that specific purpose. He had intended to cover the garbage with earth to enrich the soil as he had done on many occasions before, but was apprehended before being able to complete the operation.

He seeks to escape from the prohibition ordained on the assertion that his conduct was not within the intendment of the ordinances aforementioned.

I have no doubt that the method employed by this defendant to enrich his soil was inoffensive.

Rackham Holt in his book on the life of George Washington Carver, the great scientist, discusses with infinite detail the inexpensive and satisfactory manner of urging the land to greater productivity by the use of organic matter rather than by chemicals.

A. W. Martinez's story in Collier's magazine of recent date of the great success of Dr. Ehrenfried E. Pfeiffer of Oakland, California, who transformed the city's garbage "into fertilizer—a sweet-smelling black earth that would perform virtual miracles for the land," was in a small way emulated by the defendant.

Dr. Selman A. Waksman, a recent Nobel Prize winner and the discoverer of streptomycin, in his book Humus says that, "The mere presence of organic matter is sufficient to depress the action of disease organisms. Something in the organic matter has that power—whether it is some anti-biotic organisms, or something as yet unknown cannot be said with certainty. If you have plenty of organic matter in the soil under proper conditions of decay and observe the necessary period of

waiting before planting on raw matter, one need not fear disease."

Garbage, the mere mention of which offended the olfactory sense, has now reached majestic stature in agricultural importance. Sterile fields are made prolific, yielding the "bumper crop."

The old adage of one man's meat may be another's poison has some logical application to the line of demarcation between what may be of great advantage in the rural areas may be extremely harmful and dangerous in the urban areas.

True, the defendant's high motives and love of Nature's good earth instilled in him the desire to observe the recognized method to produce odorless garbage, and thereby transform his barren yard into a veritable paradise.

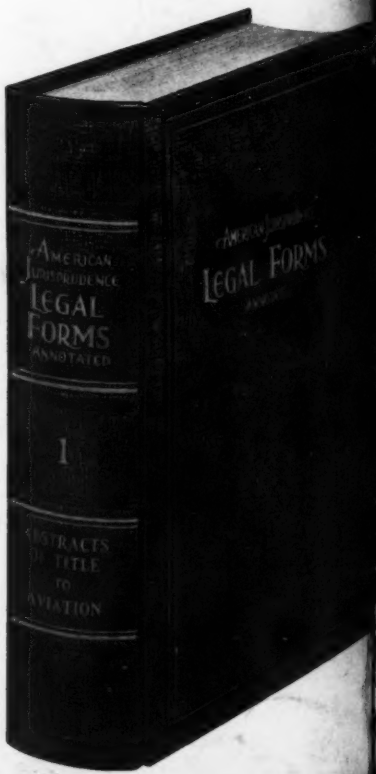
Yet, without speculating into the realm of uncertainty, there are those less learned than the defendant in the subject matter of organic fertilizer, but jealous of his success, who would attempt to emulate Mr. . . . with disastrous results to the pure air of Avalon. Stimulated, rarified and purified as it is by the gentle salt-zephyrs emanating from the broad expanse of the Atlantic Ocean—a boon to mankind during the sultry summer days and ravager of the wintry snows—thereby stunting the community's growth, rather than cause it to flourish like the green bay tree.

I am not unmoved by the high motives which actuated the defendant in his conduct which, nonetheless, finds this defendant before the bar, but established precedent directs my course. The language employed in the ordinance is clear and its meaning and application plain; thus there is no room for judicial construction. . . . I find the defendant guilty of violation of the said ordinance and its amendment, and impose a fine of $10, without costs.

Did You Know That—

There is a common saying that everyone is presumed to know the law. This is a corollary to the proposition that one guilty of violating a law cannot plead, as a defense, ignorance of the law. Of course, everyone, at all familiar with legal situations, knows that lawyers, trial judges, and even justices of appellate courts quite often do not know what the law is until a decision has been made settling the question. In 1925 a lawyer made a mistake as to the law which threatened his client with a $15,000 loss. The Minnesota Supreme Court without hesitancy helped him and his client out of this threatened disaster by declaring: "The wholly suppositious presumption that all know the law" is "almost humorous." In fact, the court quite realistically said such a proposition does not make "sense." It calls this "the useless duffle of an older generation and more arbitrary day." It announced that justice should not be "obstructed by obsolete and baseless" ideas of this sort. *Peterson v. First National Bank,* 162 Minn 369, 375, 203 NW 53.—*Bench and Bar of Minnesota.*

"A NEW ERA IN LEGAL FORM DRAFTING!"



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